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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,476	04/19/2004	Kenneth B. Higgins	5615B	3281

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 03/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/827,476

**Applicant(s)**

HIGGINS ET AL.

**Examiner**

Cheryl Juska

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>02/05</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-14, 19, 20, 25, 26, 30-32, 37, 39-47 are rejected under 35 USC 102(e) as being anticipated by US 2003/0203152 issued to Higgins et al.

Higgins discloses tufted carpet tiles having a friction enhancing coating that provides lateral grip with little or no vertical stick and with little or no blocking to itself or the carpet face (section [0119]). Additionally, said coating does not permanently stick to a subfloor surface (section [0019]). Said friction enhancing coating is applied in a dry add-on weight of less than 65 gsm, preferably less than 30 gsm, more preferably less than 20 gsm (section [0135]). Said coating may be a latex, such as acrylics, EVA, SBR, etc., or a hot melt adhesive, such as polyolefins, EVA, SBR, polyamides, etc. (sections [0126] and [0134]). The carpet may comprise a layer of PVC as a precoat layer section or a foam cushion layer (sections [0084], [0105], and [0113]). The friction enhancing coating may be applied in a continuous or discontinuous or patterned manner (section [0107]). The backside of the carpet tile may include a nonwoven felt layer that said friction enhancing coating is coated onto (section [0107]). Thus,

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claims 1-14, 19, 25, 26, 30-32, 37, 39-42, 44, and 46 are anticipated by the cited Higgins reference.

Regarding claim 20, it is asserted that the claim limitation (i.e., the surface covering is one of flooring, counter top, or wall covering) is merely descriptive of intended use. In other words, the location of installed coverings does not add any structural feature to the claimed invention. As such, the limitation of claim 20 is not given patentable weight at this time. Therefore, claim 20 is also anticipated by the cited Higgins reference.

While Higgins fails to explicitly teach a “predrafted elliptically needled felt,” it is argued that this description of the felt material amounts to a method limitation in a product claim. In other words, the method steps of predrafting and elliptically needled are not believed to produce a structurally different product than the general felt taught by Higgins. As such, the limitations of claims 43, 45, and 47 are not given patentable weight at this time and said claims are rejected along with claims 42, 44, and 46. Therefore, claims 43, 45, and 47 are also anticipated.

3. Claims 1-14, 19, 20, 25, 26, 30-32, 37, 39-47 are rejected under 35 USC 102(e) as being anticipated by US 2004/0022991 (application number 10/209,050) issued to Higgins et al. and US 2004/0022985 issued to Higgins et al. (application number 10/383,716, which is a divisional of 10/209,050).

Higgins ‘991 and ‘985 teaches the same features as taught by Higgins ‘152. Note Higgins ‘991, sections [0023], [0058], [0080], [0082], [0088], [0093], and [0100] and Higgins ‘985, sections [0022], [0057], [0077], [0081], [0087], and [0092]. Thus, said claims are also anticipated by the cited Higgins ‘991 and ‘985 references.

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4. Claims 1-14, 19-32, and 37-47 are rejected under 35 USC 102(e) as being anticipated by US 2004/0022994 issued to Higgins et al.

Higgins '994 teaches the same features as taught by Higgins '152. Note Higgins '994, sections [0018], [0037], [0038], [0076], [0148], [0176], [0210] - [0213], and [0271], [0276], and [0283]). Note Higgins '994 also teaches a vertical grip for the carpet tile having a friction enhancing coating thereon of about 0 – 5 psi and that the coating may be polyurethane or silicone (sections [0076] and [0210] - [0213]). While Higgins '994 fails to teach how the polyurethane coating is cured, it is argued the limitations of claims 28 and 29 are method limitations that do not materially effect the final product. In other words, the final products of claims 28 and 29 are the same claim 27, from which they depend. As such, claims 28 and 29 are rejected along with claim 27. Thus, claims 1-14, 19-32, and 37-47 are also anticipated by the cited Higgins '994 reference.

***Claim Rejections - 35 USC § 102/103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 21-24 are rejected under 35 USC 102(e) as being anticipated by, or in the alternative, under 35 USC 103(a) as being obvious over the cited Higgins '152, Higgins '991, and Higgins '985 references.

While Higgins '152, Higgins '991, and Higgins '985 fail to explicitly teach the presently claimed vertical adhesion values, it is reasonable to presume that said values are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e., friction enhancing coating on the underside of a carpet tile) used to produce the carpet tile. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 495. In the alternative, the claimed vertical adhesion values would obviously have been provided by the process disclosed by the cited Higgins references. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. Therefore, claims 21-24 are also rejected.

#### ***Claim Rejections - 35 USC § 103***

7. Claims 15-18 and 33-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Higgins '152, Higgins '991, Higgins '985, and Higgins '994 references in view of US 2003/0198795 issued to Grant and US 2004/0258874 issued to Desai.

While the cited Higgins references are directed to carpet tiles, other surface coverings having similar constructions are well known in the art. For example, it is well known that modular tiles for covering floors, walls, and ceilings may comprise various decorative surfaces, such as ceramic, vinyl, metal, and wood. Note Grant which teaches modular surface coverings

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include carpet tiles, ceramic panels and tiles, and vinyl materials (abstract). additionally, Desai teaches various decorative surfacing materials, such as carpet, wood, plastic, ceramic, vinyl, or laminate, may be employed for tiles of a like inventive backing construction (abstract and section [0002]). Thus, it would have been obvious to one skilled in the art to substitute another known surfacing material, such as ceramic, vinyl, laminate, or wood, as taught by Desai and Grant for the carpet layer of the Higgins references since the equivalence of the various decorative surfaces and carpet as surface coverings is well-known in the art. As such, the choice of any of these equivalents is within the level of ordinary skill in the art. Therefore, claims 15-18 and 33-36 are rejected as being obvious over the cited prior art.

### ***Conclusion***

8. The art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CHERYL A. NUSKA  
PRIMARY EXAMINER